1969

Juan Jaramillo v. John W. Turner : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

o o 0 0 0 o o

JUAN JARAMILLO,

Appellant,

v.

JOHN W. TURNER, Warden,
Utah State Prison,

Defendant.

Case No. [illegible]

BRIEF OF [illegible]

Appeal from a Denial of [illegible]

Judicial District Court of [illegible]

The Honorable [illegible]

Attorney General

VERNON B. ROMNEY
State Capitol Bldg.
Salt Lake City, Utah

TABLE OF CONTENTS

STATEMENT OF THE CASE 1

DISPOSITION BY LOWER COURT 1

RELIEF SOUGHT ON APPEAL 1

STATEMENT OF FACTS 2

ARGUEMENT 5

POINT 1

THE SENTENCING JUDGE DID NOT ADVISE APPELLANT OF THE MAXIMUM PENALTY PROVIDED FOR THE CHARGE TO WHICH HE PLEAD GUILTY 5

POINT 2

APPELLANT WAS INADEQUATELY DEFENDED AND NOT ADVISED OF HIS LEGAL RIGHTS BY THE COURT APPOINTED PUBLIC DEFENDER 7

AUTHORITIES

People v. Leach, 41 N.W. 2d 377 6

People v. Mackey, 211 N.E. 2d 706 5

Rimarich v. U.S., 357 F. 2d 537 6

State ex rel Beibinger v. Ellsworth, 415 P. 2d 728 6

TABLE OF CONTENTS (Cont.)

STATUTES

76-51-1, U.C.A. 2

77-24-6, U.C.A. 5

77-64-1, U.C.A. (1967 Supp.) 7

CONSTITUTIONS

Fourteenth Amendment, United States Constitution 6

IN THE SUPREME COURT OF THE STATE OF UTAH

JUAN JARAMILLO, Plaintiff, v. JOHN W. TURNER, Warden, Utah State Prison, Defendant.	)	Case No. 11634

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal from a denial of habeas corpus in the Third District Court, Salt Lake County, Utah.

DISPOSITION OF THE CASE BY LOWER COURT

The Honorable Stewart Hanson, Judge of said District Court, issued an order on April 6, 1969, dismissing appellant's petition for habeas corpus on the grounds that appellant was properly sentenced and had adequate counsel at the time. (See Record on Appeal, p. 6)

RELIEF SOUGHT ON APPEAL

Appellant asks this Court to reverse the decision

of the lower court and set aside appellant's plea of guilty entered in the Third Judicial District Court on February 13, 1968, in that said guilty plea, as entered, was repugnant to the laws of the State of Utah and in violation of the due process and equal protection of the law clause of the Fourteenth Amendment for the following reasons.

STATEMENT OF FACTS

On or about November 24, 1967, appellant was arrested in Salt Lake City, Utah, and charged with the crime of robbery, 76-51-1, U.C.A.

Appellant was arraigned in Magistrate's Court on or about November 28, 1967, at which time he plead not guilty to the charge and requested and was appointed a public defender to defend him against this charge and a preliminary hearing was then scheduled for the month of January, 1968, and appellant was remanded to the Salt Lake County Jail.

At this preliminary hearing, appellant first met the attorney who was appointed to represent him, Mr. Jay Barney, of the Public Defender's Office, who, without consultation, advised appellant to waive the

preliminary hearing. Appellant refused. During this hearing, Mr. Barney made no objections or motions and his only advice to appellant was that he should plead guilty. Appellant was then bound over to the district court for trial, which was set for February 13, 1968.

On February 13, 1968, appellant appeared in district court and upon a motion by the district attorney, the trial date was postponed until April 18, 1968. This postponement was effected without any objection by appellant's attorney.

Mr. Barney never once visited with appellant in the county jail and never spoke to him during any court appearances about preparing a defence against this charge. Nor did this attorney at any time during the course of these proceedings offer any advice to appellant regarding his rights under the law, except that he persisted in attempting to pursuade appellant to plead guilty. Especially, he did not apprise appellant as to the maximum penalty for robbery, which penalty is a life term in prison.

On February 13, 1968, appellant had been confined

...ment, [illegible] ...ples-
...ent. [illegible] ...or interme-
...ail.
...[illegible] ...process, beaten
...conditions
...in the county jail,
...eventual trial by
...hostile indif-
...requests for appellant to change
...[illegible] ...put an end to these court
...proceedings, appellant actually "waived anything" at
...[illegible] ...to
...on the mercy of the court,
...[illegible] ...sentencing from the bench.
...counsel's assistance, immediately
...[illegible] ...an indeterminate term in prison,
...[illegible] ...appeal, R.C. 2953.
...[illegible] ...by the public
...[illegible] ...sentence

for robbery could be a sentence of life in prison.

POINT 1

THE SENTENCING JUDGE DID NOT ADVISE APPELLANT OF THE MAXIMUM PENALTY PROVIDED FOR THE CHARGE TO WHICH HE PLEAD GUILTY

The Honorable Marcellus K. Snow, who passed sentence on appellant, erred when he did not advise appellant, in accordance with 77-24-6, U.C.A., that the charge to which he plead guilty called for a maximum penalty of life imprisonment.

It is a fundimental rule of law that a defendant who pleads guilty to a charge must understand the nature of the charge and be made fully aware of the consequences of so pleading.

This concept is best expressed in People v. Mackey, 211 N.E. 2d 706, where the court held that:

> . . . Supreme Court rule 26 requires the court to explain to a defendant, before pleading, the "consequences" of a plea. The court did not comply by merely informing defendant that he could be sentenced to "more than one year" in each case.

A Montana case also clearly states a defendant's rights by declaring:

> Before accepting a guilty plea, trial judge must inform defendant of maximum penalty which may be imposed. State ex rel Beibinger v. Ellsworth, 415 P.2d 728. (See also: Rimanich v. U.S., 357 F.2d 537; People v. Leach, 41 N.W.2d 377)

By accepting the guilty plea without attempting to determine whether appellant was making an intelligent waiver, or if he was in fact aware of the full consequences of entering such a plea, said sentencing judge further deprived appellant of the due process of law and equal protection of the law clause of the Fourteenth Amendment.

POINT 2

APPELLANT WAS INADEQUATELY DEFENDED AND NOT ADVISED OF HIS LAGAL RIGHTS BY THE COURT APPOINTED PUBLIC DEFENDER

Appellant's court appointed attorney, Mr. Jay Barney, in contravention of the rules enumerated in

77-61-1, U.C.A. (1967 Supp.), did not, at any time during the pre-trial process, make any attempt to build a defence against this charge of robbery. Instead, from his first encounter with appellant, his only advice and suggestions were for appellant to plead guilty. By so pleading, Mr. Barney alleged, appellant would save the state the time and expense of a trial, and the court might therefore be more favorably disposed toward appellant.

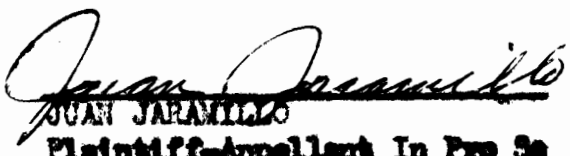
Under the circumstances described herein, appellant, who did not understand his rights under the laws of Utah, and was led to believe by counsel that justice would not be accorded to him in court, decided on the spur of the moment to enter a plea of guilty and seek mercy instead.

Although it is not an issue at this time, appellant wishes to assert that he is not guilty of the robbery to which he plead guilty.

CONCLUSION

Appellant submits that the decision of the lower court should be set aside and the guilty plea entered be declared null and void.

Respectfully submitted,



JUAN JARAMILLO
Plaintiff-Appellant In Pro Se
Box 250
Draper, Utah 84020

Dated this 13th day of September, 1969.